

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SARAH TRAN, on her behalf and on
behalf of Tinh Nguyen, deceased; and
BICH T. TRAN,

Plaintiffs,

vs.

CONDOLEEZZA RICE, in her official
capacity as Secretary of State; and
SETH D. WINNICK, in his official
capacity as Consul General,

Defendants.

CASE NO. 06-CV-02697-H
(BLM)

**SCHEDULING ORDER RE
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
AND OTHER MOTIONS**

On December 12, 2006, plaintiffs Sarah Tran and Bich T. Tran ("Plaintiffs") filed a complaint against defendants Condoleezza Rice and Seth D. Winnick ("Defendants") seeking declaratory and injunctive relief regarding the federal government's exclusion of Sarah Tran's adopted Vietnamese daughter Bich Tran from the United States. (Doc. No. 1.) On February 21, 2007, Plaintiffs filed a motion for a preliminary injunction and a temporary restraining order ("TRO") seeking to enjoin Defendants from barring Bich Tran from the United States or from delaying the processing of Bich Tran's Orderly Departure Program and H-2B visa applications. (Doc. Nos. 13-14.) Plaintiffs also filed a motion requesting the Court to certify to the Secretary of State, pursuant to 8 U.S.C. § 1202(f)(1), that the visa file of Bich Tran is needed by the court in the interest of the

1 ends of justice, which would allow the Secretary of State, in its discretion, to make
2 certified copies of the file available to the Court. (Doc. No. 15.)

3 Rule 65(b) of the Federal Rules of Civil Procedure permits a district court to
4 grant an ex parte TRO only if:

5 (1) it clearly appears from specific facts shown by affidavit or by the
6 verified complaint that immediate and irreparable injury, loss, or damage
7 will result to the applicant before the adverse party or that party's attorney
8 can be heard in opposition, and (2) the applicant's attorney certifies to the
9 court in writing the efforts, if any, which have been made to give the
10 notice and the reasons supporting the claim that notice should not be
11 required.

12 After carefully reviewing all of the papers, the Court concludes that Plaintiffs have not
13 met these standards, and accordingly the Court denies Plaintiffs' motion for an ex parte
14 TRO. Since Plaintiffs did not complete their required certificate of service until
15 February 18, 2007 (Doc. No. 12), and Defendants have 60 days after that date to file
16 their answer, see Fed. R. Civ. Proc. 12(a)(3)(A), the Court will hold a hearing on the
17 Plaintiffs' other motions after the 60 day period is completed. Therefore, the Court will
18 hold a hearing regarding Plaintiffs' motions for preliminary injunction and whether the
19 Court will certify to the Secretary of State that Bich Tran's visa file is needed by the
20 court in the interest of the ends of justice on **April 23, 2007 at 10:30 a.m.** Any
21 oppositions to these motions should be filed by Defendants on or before **March 26,**
22 **2007**, and any reply should be filed by Plaintiffs on or before **April 9, 2007.** If

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28 Defendants require more time to file an opposition, they must file a request showing

1 good cause why the Court should grant a continuance.

2 IT IS SO ORDERED.

3 DATED: February 23, 2007

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5 MARILYN L. HUFF, District Judge
6 UNITED STATES DISTRICT COURT
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21 COPIES TO:

22 Alexandra T. Manbeck
23 Law Offices of Alexandra T. Manbeck
24 4531 University Avenue
25 San Diego, CA 92105

26 Samuel W. Bettwy
27 U S Attorneys Office Southern District of California
28 Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101